88-1101 (1)

No.

Supreme Court, U.S.
FILED
DEC 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1988

EUNICE C. MADISON,

PETITIONER,

v.

DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION,

RESPONDENT,

CLIFTON TERRACE
ASSOCIATES, Ltd. et al.,

INTERVENOR.

Petition For A Writ Of Certiorari
To The District Of Columbia
Court Of Appeals

EUNICE C. MADISON
Pro Se

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14 pp

QUESTIONS PRESENTED

1. Whether Intervenor, Clifton TerraceAssociates, Ltd., was invalidly subsidized on June 1, 1983 when the events com-complained of by petitioner occurred: i.e. severe rent increase without thirty days notice, apartment in poor condition, and guard service severely cut which resulted later in vandalism.

2. Were appellant's constitutional and statutory rights violated by denial of due process in the hearings with hearing examiner.

3. Whether the claim of lack of jurisdiction in the Rental Housing Commission is misplaced, since it was the Rent Administrator who claimed lack of jurisdiction erroneously, because he assumed jurisdiction in issuing a subpoena, and in addition he has primary jurisdiction, and also jurisdiction over Titles IV, V,, VI, and VII, as well as Title II of District of Columbia Law 3-131 (1980).

4. Whether it was abuse of discretion

QUESTIONS PRESENTED (Continued)

on the part of the District of Columbia Court of appeals and Rental Housing Commission not to consider that the former Rental Housing Commission had remanded the case for a hear-- ing on thbmerits of non-exemption from rent-control, Whether it was error for thrm to in-sist that Petitioner should apply for sub-sidy when HUD regulations forbid it.

5. Whethe r the interpretation of the rent control law as made in t his case is over-broad when it includes freedom from housing code violations and the usual procedural safe-guards between landlord and tenant

6. Whether the state of the lost records and documents and photogpaphs in the Rent Adminis - trator's and Rental Commission Offices fail to meet the tes t of substantial evidence in the record.

CIST OF PARTIES

The parties to the proceeding below were Eunice C. Madison, pro se., Clifton Terrace Associates, Ltd., , and Phoenix Management Services.

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Eunice C. Madison respectfully prays that a writ of certiorari issue to review the memorandum decision of the District of Columbia Court of Appeals entered on July 15, 1988.

OPINIONS BELOW

The Memorandum Decision of the District of Columbia Court of Appeals is included in the Appendix at 2a. Petitioner filed petition for rehearing or rehearing en banc, and the District of Columbia Court denied the petition on August 30, 1988. Copy of the denial is included in the Appendix at 3a.. Petitioner filed a motion for stay of the mandate pending application for a writ of certiorari to the Supreme Court of the United States, and the District of Columbia Court of Appeals denied the motion on September 15, 1988. A copy of the denial is included at 4a in the Appendix.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Chief Justice Rehnquist extended the time for filing this petition to December 28, 1988.

STATEMENT OF THE CASE

This case begins with the purchase by a North Carolina partnership of the Clifton Terrace Apartments, a three-building complex, located in northwest Washington between 13th and 14th streets northwest. The purchase was made on June 3, 1983.

The property was in a badly deteriorated condition and was sold "as is" with the covenant that rehabilitation be completed within six months, after which subsidies would be available under Section 8 of the National Housing Act, up to 100% of the tenants.

Petitioners' apartment, an efficiency unit, was also in a bad state of repair, it not having been painted for thirteen years. There were great holes in the walls and ceiling, falling plaster and discoloration on walls and ceiling. and broken windows.

Despite these conditions the new landlord, Clifton Terrace Associates, Ltd., Intervenor, averred that the property was in good and tenant-

able condition, and that he had a certificate of occupancy for 1350 Clifton Street N.W., the building in which Petitioner's apartment is located. However, he did not even apply for a certificate of occupancy for that building until October 21, 1983, and did not obtain it until February 20, 1985. Intervenor, Clifton Terrace Associates, Ltd. did not even own the building until June 3, 1983. Yet, on the basis of their averments, they were permitted to become subsidized, i.e., enter the Housing Assistance Payments (HAP) contract with the United States Department of Housing and Urban Development (HUD). before even owning the property.

The procedure is first to enter into an Agreement-To-Enter-Into-Housing-Assistance-Payments contract before rehabilitation is begun.

After rehabilitation is completed, but not before, such completion, can the owner increase the rents to the contract rents listed in the HAP CONTRACT.

As a result, of becoming subsidized immediately , instead of having to wait till rehabilitation was completed Intervenor could then increase his then current rent roll of $606,084, immediately to $1,724,472. They have had many rent increases since then, none of which have been effected by the method required by HUD including tenant participation, in accordance with 24 C.F.R.§§ 246.22, and 245.

Despite the poor conditions in petitioner's apartment, Intervenors increased her rent from $138 per month to $259 per month without a thirty-day notice, as required by District of Columbia and Federal law and due process..

- District of Columbia law 3-131 §905(b) states:

> No rent increases, whether pursuant to this act, . . . or any administrative decisions thereunder , shall be effective until the first day on which rent is normally paid occurring more than thirty (30) days after notice is given to the tenant.

District of Columbia law 3-131 §901

Penalties (a)(2) states:

> (a) Any person who knowingly:
> (2) Substantially reduces or eliminates services previously provided for a rental unit shall be held liable by the Rent Administrator, or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount and/or for a roll back of the rent to such amount as the Rent Administrator or Rental Housing shall determin (Emphasis added).

In addition to the unconscionable rent increase, Intervenors decreased the security service guards from eight guards per eight-hour shift for a three-shift day to approximately one guard per night and two per weekend. Finally they eliminated all guard service. Such action was proximate cause of severe vandalism, ransacking and theft which occurred in Petitioner's apartment.

Now maintenance has dropped to a bare minimum. There has been no elevator service for three years, and before that it was sporadic. Housing code violations are not acted upon. A

Petition was signed by many tenants recently and sent to owners and management, asking for action on some deficiencies. George F. Marshall sent a long letter, saying that he had applied to HUD for money to fix things. In his letter he stated that when he purchased Clifton Terrace, it was a disaster area like Germany after the last world war. This is contrary to what he said in 1983 to obtain the HAP contract, but it confirms that he misrepresented conditions then. He stated that there were many vacancies then. Still many now exist, as is evidenced by the many boarded up apartments.

It appears that they have over-broadly construed the rent control law to mean freedom from the landlord's duty to maintain property in a good tenantable condition,

meeting the implied warranty of habitability.

Petitioner knew nothing about rent control when the events of 1983 happened. she had not been given a notice in writing in accordance with D.C. Law 3-131 § 206(b):

> Prior to the execution of a lease or other rental agreement after the effective date of this act, a prospective tenant of any unit exempted under 206(a) shall receive a notice in writing advising him or her that rent increases for the accommodation are regulated by the Rent Stabilization Program. (emphasis added)
>
> § 206(d) Within ninety days (90) of of the effective date of this act, each landlord of any rental unit not exempted by this act and not registered under the Rental Housing Act of 1977, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District of Columbia for which he or she is receiving rent or is entitled to receive rent. Any person who becomes a landlord of such a rental unit after the effective date of this act shall have thirty (30) days within which to file a registration statement with the Rent Administrator.

> One of the items to be included in the statement is §206 (d) (5) a list of any outstanding violations of the Housing regulations applicable to such accommodation or an affidavit by the building owner or manager that there are no known outstanding violations;

Petitioner filed a petition in the District of Columbia Department of Consumer and Regulatory Affairs with the Rental Accommodations Office on December 30, 1983, listing her four-part complaint : increase of rent without a thirty-day notice for "as is" housing. accompanied by a severe reduction in security guard services in an area where it is very essential and the latter was proximate cause of extreme vandalism and theft in her apartment.

The contact representative reccommended that she go to HUD, but that would have been of no help. They had sold the property, and it was not a respondeat superiore situation . Owners are free to make their own decisions with general guidance under the HAP Regulatory Agreement.

A hearing with the Rental Housing Commission was granted, after dismissal by the Rent Administrator. That resulted in the very brief hearing of December 4, 1984, dismissed very abruptly by the Hearing Examiner, Carl Bradford.

Appeal to the Rental Housing Commission resulted in a reversal of the foregoing examiner's decision and a remand for a hearing de novo. Commissioner Marlin, in his decision stated that what Examiner did not do "was to consider the arguments raised by Petitioner."

> These arguments include the alleged failure of the landlord to follow procedures required by HUD regulations to qualify the landlord for HUD pre-exemption from local rent control and her contention that her rental unit (#516) would not be exempt from rent control in any event because she pays market rate rent.
>
> The failure to consider her positions on their merits, and to make appropriate findings of fact and conclusions of law, violates the DCAPA and a host of judicial decisions interpreting these due process standards. Citizens Association of Georgetown v. District of Columbia Zoning Commission, 402 A.2d 36, 41-42 (D.C.1979).